

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Reorganization and Revision )  
of Parts 1, 2, 21, and 94 of )  
the Rules To Establish a New )  
Part 101 Governing )  
Terrestrial Microwave Fixed )  
Radio Services )

WT Docket No. 94-148

DOCKET FILE COPY ORIGINAL

**COMMENTS OF GTE**

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telephone and wireless companies

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February 17, 1995

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## **SUMMARY**

The Commission's Notice of Proposed Rulemaking in this docket ("Notice") proposes important steps in improving and enhancing the regulatory processes applicable to licensees of Part 21 and Part 94 microwave facilities. GTE, whose affiliates hold approximately 1600 Part 21 microwave licenses, supports the majority of the Notice's proposals as well as the text of the proposed Part 101 rules. GTE believes, however, that the Commission's proposed rules should be modified in several respects in order to improve both their efficacy and efficiency. GTE's view on specific proposals and its recommendations for modifications are outlined below.

The new Part 101 should more closely conform the application, frequency coordination, and technical requirements governing private operational fixed microwave and point-to-point microwave operations than is currently the case. The same application form should be used in both services. Application technical requirements for both services should be spelled out in full in a single section. Similarly, the technical requirements governing both services should be set forth in a single subpart in Part 101. Finally, the Commission should explicitly state that the frequency coordination process outlined in proposed Section 101.103 applies equally to point-to-point microwave and private operational fixed microwave.

Proposed Section 101.15(e), (f), and (g): The period for consummation of transfers of control and assignments should be extended from 45 days to 60 days. If the parties have not completed the transaction at the end of that period, they should be permitted to file a notification with the Commission of that fact and their intentions as to future consummation. The Commission should not be required to act on this notification. GTE supports the Commission's proposal to eliminate the requirement that common carriers notify the Commission within 10 days of the date of consummation.

**Proposed Section 101.61(d):** Licensees should be permitted to notify the Commission of incorrect license information stemming from Commission errors by means of a letter filing meeting certain standards.

**Proposed Section 101.63(a):** The Commission should retain the existing 18-month construction period for point-to-point microwave facilities, instead of reducing the period to 12 months.

**Proposed Section 101.67(a):** The Commission should explore alternative renewal procedures, since the approach contained in proposed Section 101.67(a) will be highly burdensome and problematic for licensees and the staff.

**Proposed Section 101.713:** GTE supports the Commission's proposal to delete the public interest showing currently required of point-to-point microwave applicants under existing Section 21.706(a) of the Rules.

**Revisions to Forms 494 and 494-A:** Before adopting final revised versions of Forms 494 and 494-A, the Commission should solicit public comment. This approach would lead to adoption of useful, accurate forms.

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**COMMENTS OF GTE**

GTE Service Corporation ("GTE"), on behalf of its telephone and wireless companies, hereby submits its comments on the Notice of Proposed Rulemaking in the above-captioned docket.<sup>1</sup> GTE affiliates are substantial users of point-to-point microwave facilities, primarily licensed under Part 21 of the Commission's Rules. For example, GTE's cellular affiliates deploy fixed microwave paths to interconnect cell sites with one another and with mobile telephone switching offices ("MTSOs"), as well as to link cellular operations with the landline telephone network. In addition, GTE's local exchange operations employ microwave facilities in connection with their provision of local exchange service to the public.

GTE accordingly is very familiar with the Commission's Part 21 policies and licensing procedures. GTE also has been active in industry standards-setting and in Commission proceedings seeking to streamline and simplify the regulatory requirements governing telecommunications services — such as cellular — that are supported by essential point-to-point microwave links.

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<sup>1</sup> FCC 94-314 (Dec. 28, 1994) ("Notice").

GTE generally supports the proposals contained in the Notice, as well as the majority of the specific rules set forth in proposed Part 101. GTE concurs that it makes sense, in light of the current environment in which Part 21 and Part 94 licensees and applicants must seek authorizations and the increased technical parallelism between the two parts, to consolidate the rules into a single part and to conform the rules to the greatest extent possible.

GTE shares the Commission's view<sup>2</sup> that a number of the existing application requirements, particularly in Part 21, are not necessary for Commission review and processing of the applications or to satisfy its Communications Act obligations. Requiring applicants nonetheless to comply with these unnecessary information and filing requirements imposes burdens on applicants as well as the Commission staff that are not justified under the public interest standard. Streamlining the application process to the greatest extent possible will benefit both applicants and the persons and entities that ultimately obtain service by means of the licensed microwave facilities.

Given its overall support for the goals sought to be achieved by the Commission as well as its concurrence in the majority of the proposed rules set forth in the Notice, GTE nonetheless believes that certain proposed rule sections should be revised in order to more effectively achieve the Commission's stated goals. These items, as well as GTE's views on certain specific proposals set forth in the Notice, are discussed in the following sections.

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<sup>2</sup>

E.g., Notice, ¶ 7 ("The Part 21 and Part 94 rules need to be consolidated, conformed, and updated to allow the microwave industry to operate as efficiently as possible without being hampered by obsolete regulations.").

**A. Greater Conformance in the Rules and Policies Governing Private and Common Carrier Microwave Facilities Will More Effectively Achieve the Commission's Goals in This Proceeding as Well as Further the Public Interest**

The Notice indicates that "[t]he key objectives in this Notice of Proposed Rulemaking (Notice) are to restructure the fixed microwave rules so that they are easier for the public to understand and use, to conform similar rule provisions to the maximum extent possible, to eliminate redundancy, and to remove obsolete language."<sup>3</sup>

Elsewhere, the Notice points out that "[t]his rulemaking is an effort to conform filing, processing, operational, and technical requirements for services that are technically similar and, thereby, to gain significant economies and alleviate confusion to the public."<sup>4</sup> Finally, the Commission states that, "we expect the proposed rules to encourage more efficient use of the microwave spectrum."<sup>5</sup>

To achieve these laudable goals, GTE believes that further steps can be taken in the structure of proposed Part 101 to clarify and conform the requirements applicable to private and common carrier microwave applicants and licensees. GTE urges the Commission to make clear that a number of coordination, technical, and application requirements already applicable to common carrier microwave proposals also govern private microwave paths.

Initially, GTE recommends that a single rule spell out in full the technical content of applications filed by both private operational fixed microwave and point-to-point microwave operators. Proposed Section 101.21<sup>6</sup> currently governs the technical content of common carrier applications. This section should be expanded to incorporate private microwave applications as well.

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<sup>3</sup> Notice, ¶ 1.

<sup>4</sup> Id., ¶ 2.

<sup>5</sup> Id., ¶ 7.

<sup>6</sup> Id. at 43.

More importantly, this section should detail each item of technical information to be contained in the applications submitted for both common carrier and private microwave authorizations. At present, the proposed section specifies the technical content requirements primarily by relying upon the application form questions and cross-references to Subparts C, F, G, I, and J. This structure makes it very difficult for a potential applicant to easily confirm what technical data is to be included with an application without turning back and forth between various portions of the rules. Spelling out the application requirements (at least with respect to technical content) in a single section will greatly simplify the rules and enhance the understanding of the Commission's requirements by the public. In particular, there is a meaningful opportunity here for the Commission to capture critical operating data and record it in a national data base if the applicable requirements are spelled out in full.

Consistent with this view, GTE believes that applications for private operational fixed microwave and point-to-point microwave facilities should be submitted on the same form. Based on GTE's review of the forms, Form 494<sup>7</sup> appears to contain the types of information useful to the Commission as well as other potential microwave users in understanding the operational and interference environment.

GTE also urges the Commission to combine the technical standards governing private operational fixed microwave facilities and point-to-point microwave facilities in a single subpart. Moreover, to the greatest extent possible, those technical requirements should be consistently and uniformly applied to uses in both pre-existing categories of service. This would streamline the Part 101 rules and promote non-interfering operations. Adoption of this approach would involve moving a number of provisions

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<sup>7</sup> GTE urges the Commission, in section G below, to propose and seek comment on a new Form 494.



from proposed Subparts H and I, conforming them, and placing them in a single subpart (Subpart C would appear to be the logical location).

Likewise, the Commission should make clear that all private operational fixed microwave and point-to-point microwave applicants must comply with the frequency coordination procedures spelled out in proposed Section 101.103.<sup>8</sup> At present, only point-to-point microwave facilities would be subject to the prior coordination procedures contained in existing Part 21 of the Rules. Apparently, although it is not stated in proposed Part 101, private microwave applicants would continue to use the existing processes to identify suitable frequencies. Given the fact that private and common carrier fixed microwave users will increasingly be operating in the same bands, these disparate frequency coordination processes will lead to certain, substantial, and detrimental interference problems. The prior coordination process, which is very effective and has proved its worth in the common carrier microwave environment for a number of years, should be extended to private microwave operations as well.

In making revisions to proposed Section 101.103, the Commission should take this opportunity to add a subsection spelling out the purposes of the prior frequency coordination process embodied in that rule. These purposes include promoting interference-free operation as well as spectrum-efficient usage. A statement of purposes would help to ensure that all applicants governed by this frequency coordination requirement, particularly users in the private microwave service to whom these procedures will be new, have an understanding of what goals are to be achieved as a result of employing the prior coordination process. The Commission might also take advantage of the Report and Order ultimately adopted in this proceeding to discuss the requirements and numerous benefits of prior coordination procedures, so

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<sup>8</sup> Notice at 68-71.

that all operators in the private operational fixed microwave and point-to-point microwave services have the same understanding of the process.

These rule conformances and clarifications are essential to efficient, interference-free operation in the frequency bands allocated for private operational fixed microwave and point-to-point microwave usage. These steps will benefit both licensees and the users of the communications paths afforded by the radio frequencies. This clearly is consistent with the Commission's goals in this proceeding.

**B. The Period for Consummating Transfers of Control and Assignments of Licenses Should Be Extended to 60 Days and the Procedures Should Be Simplified in Other Respects**

The Notice requests comment on whether the current 45 day period<sup>9</sup> for completing transfers of control and license assignments should be extended to 360 days or longer, and whether applicants should be permitted to notify the Commission of a failure to consummate.<sup>10</sup> The Commission has proposed to eliminate the requirement for common carriers to notify the Commission within 10 days of the transaction's consummation.<sup>11</sup> Despite these proposals, proposed Subsections 101.15(e),(f), and (g) continue to specify a 45 day consummation period as well as the 10 day period for notifying the Commission of the consummation.

GTE believes that the 45 day period should be extended to 60 days. This would conform the rules to the required consummation period recently adopted by the Commission for Part 22 transfers and assignments.<sup>12</sup> If, at the end of that period, the parties have not yet completed the transaction, the parties should be permitted to notify

<sup>9</sup> See 47 C.F.R. §§ 21.11(d) - 21.11(f) (1993).

<sup>10</sup> Notice, ¶ 12.

<sup>11</sup> Id.

<sup>12</sup> See 47 C.F.R. § 22.137(b), Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, CC Docket No. 92-115, B-21 (Sept. 9, 1994).

the Commission of that fact, and to indicate their intentions with respect to completing the transfer or assignment at a subsequent time. This statement would be a notification only, and would not require the Commission to take any action to grant an extension of time.<sup>13</sup>

GTE also supports the Commission's recommendation to delete the requirement that common carriers submit notification of consummation to the Commission within 10 days.<sup>14</sup> Rather, as the Notice apparently proposes, the parties to a transaction should be required to notify the Commission only if the transfer or assignment is not completed.

Finally, GTE does not believe that the basic consummation period should be any longer than 60 days, such as the 360 days proposed in the Notice. GTE is concerned that prescribing nearly a year as the basic period for consummation may increase the difficulty of licensee monitoring of compliance with the Commission requirements, in turn increasing the likelihood that licensees will fail to notify the Commission when they do not complete an approved transaction. Rather, the proposal put forward by GTE, with a 60-day base period, extensions of that period based on licensee notifications, and filings only to reflect a failure to consummate, strikes a more appropriate balance.

**C. Licensees Should Be Able To Correct Errors In Licenses Resulting From Commission Mistakes by Means of a Letter**

Proposed Section 101.61(d) requires licensees to correct erroneous information on a license, not involving a major amendment as defined in proposed Section 101.29, by filing Form 494<sup>15</sup> (which requires the submission of a filing fee, currently set at

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<sup>13</sup> To the extent the Commission continues to require parties to request extension of the consummation period, it should clarify its rules to permit counsel to the parties to seek such an extension without requiring the signature of one of the parties.

<sup>14</sup> Notice, ¶ 12.

<sup>15</sup> Notice at 63.

\$180.00). Where the erroneous license information is based on incorrect data provided by the licensee in the underlying filings, requiring submission of a form specifying correct information is appropriate.

Given the sheer volume of applications processed by the Commission staff, some license errors not resulting from incorrect application submissions undoubtedly will occur.<sup>16</sup> In those circumstances, it seems manifestly unfair to require licensees to complete another Form 494, including in many situations the conduct of another frequency prior coordination<sup>17</sup> and preparation of the required application documentation, in order to obtain a license that reflects in full the information actually and originally provided by the licensee.<sup>18</sup> GTE believes that the burden imposed on both licensees and the staff can be lessened by permitting licensees to identify erroneous license information in letter form. Specifically, licensees should be permitted to file a letter with the FCC enclosing a copy of the authorization marked to identify the incorrect data. The letter would also enclose a copy of the underlying filings, highlighting the correct data as originally submitted to the Commission. This would appear to be an effective means of expeditiously resolving these types of license corrections.

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<sup>16</sup> For example, GTE cellular affiliates in adjacent markets may seek to license a two-way microwave hop linking the two cellular systems. In that case, the name of the licensee for each transmitting facility is different. Nonetheless, GTE often receives licenses for such two-way microwave links both issued in the name of the same licensee. In that circumstance, one of the licenses contains erroneous information and must be corrected.

<sup>17</sup> This activity involves both time delays and expense.

<sup>18</sup> The licensee also apparently would have to submit another filing fee with its Form 494 notification of correction.

**D. The 18-Month Construction Period for Point-to-Point Microwave Facilities Should Be Retained**

Proposed Section 101.63(a) contemplates a 12-month construction period for point-to-point microwave facilities.<sup>19</sup> This represents a reduction in the currently authorized construction period from 18 months, as specified in Section 21.43(a)(1).<sup>20</sup> The Commission has provided no explanation for this substantial reduction in the period of time that licensees have to construct and place into operation authorized facilities.

GTE affiliates, like many other microwave users, generally desire to place authorized facilities into operation as quickly as possible. Nonetheless, the likely result of the proposed reduction in the point-to-point microwave construction period will be an increase in the number of requests for extension of time to complete construction. There are numerous instances where the process of obtaining state and local regulatory approvals,<sup>21</sup> even when begun concurrently with the filing of the FCC application, consumes much of the existing 18-month construction period. These are circumstances beyond the control of the licensee, and would appear to warrant grant of an extension of time beyond 12 months. The filing of increased numbers of extension of time requests, however, would unnecessarily consume staff resources in review and action on such filings. This consumption of scarce Commission resources can be obviated simply by retaining the 18 month construction period.

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<sup>19</sup> Notice at 63.

<sup>20</sup> 47 C.F.R. § 21.43(a)(1) (1993).

<sup>21</sup> For example, the procedures employed by the California Public Utilities Commission often impose substantial time delays on the construction of point-to-point microwave facilities located in that state. Similarly, obtaining appropriate zoning clearances can often be a time-consuming effort.

**E. License Expiration Dates Should Be Altered and Clarified**

Proposed Section 101.67(a) provides that "licenses for stations authorized under this Part will be issued for a period not to exceed 10 years from date of grant."<sup>22</sup> GTE interprets this rule to mean that, in general, point-to-point microwave licenses will be granted with an expiration date ten years from the date of grant of the authorization. Thus, microwave licenses will expire at different times throughout each year.

The most recent set of renewal applications for point-to-point microwave licenses was filed in accordance with the following schedule:

- Licenses issued to AT&T: February 1, 1990;
- Licenses issued to the former Bell Operating Companies: August 1, 1990; and
- Licenses issued to other carriers: February 1, 1991.<sup>23</sup>

GTE assumes that most or all of these licenses were renewed for a period of ten years, thus meaning that subsequent rounds of renewal applications will be due in the years 2000 and 2001.

GTE can sympathize that, in light of the explosive growth in point-to-point microwave usage and licensing in recent years, the Commission may not want all renewal applications filed on three separate dates over a short period of time. The alternative proposed in new Part 101, however, will present serious logistic and monitoring problems for companies like GTE, whose affiliates hold approximately 1600 microwave licenses. Monitoring expiration dates that may occur at any time in the year will require extensive licensee staff oversight. Moreover, in that scenario, it is less likely

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<sup>22</sup> Notice at 64.

<sup>23</sup> See Revision of Part 21 of the Commission's Rules, 2 FCC Rcd 5713, 5728 (1987).

that licensees will be able to take full advantage of a proviso in proposed Section 101.15(d), which provides that, "[w]henver a group of station licenses in the same radio service are to be renewed simultaneously, a single 'blanket' application may be filed to cover the entire group if the application identifies each station by call sign and station location."<sup>24</sup> Preparing and filing separate applications will increase the burden on licensees, and undoubtedly will add to the staff's processing load.

GTE accordingly urges the Commission to explore alternatives that strike a more equitable balance between the Commission's workload and the logistical nightmare confronting licensees if the current proposal is adopted. One possible compromise solution builds on the Part 22 model. For example, all cellular licenses expiring in a particular year expire on October 1 of that year.<sup>25</sup> The Commission could adopt a similar approach for microwave authorizations, granting them for a period of ten years or less, always to expire on August 1.<sup>26</sup> This will enhance the ability of licensees effectively to monitor expiration dates of microwave licenses and take advantage of the consolidated filing procedures, while spreading out the renewal application filings so that the Commission is not entirely inundated every ten years.

Other commenters may present proposals in this area for the Commission's consideration. GTE urges the Commission to explore all possible options and strive for a renewal policy that is not based on randomly scattered license expiration dates.

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<sup>24</sup> Notice at 41.

<sup>25</sup> See 47 C.F.R. § 22.45(b) (1993) (superseded).

<sup>26</sup> GTE suggests this date to minimize conflicts with other periods during the year when licensees must prepare other Commission forms (e.g., the filing of Forms 430) or otherwise have substantial pre-existing time and work commitments.

**F. The Commission Should Delete Any Public Interest Showing Requirements**

The Commission has proposed to delete the public interest showing generally applicable to common carrier microwave applications under existing Section 21.13(a)(4) of the Rules,<sup>27</sup> and has queried whether also to delete the public interest showing now required of point-to-point microwave applicants under existing Section 21.706(a) of the Rules.<sup>28</sup> GTE supports deletion of both these requirements.

As the Commission explained in the context of deleting the Section 21.13(a)(4) showing, it has tentatively concluded that the grant of applications complying with the rules is in the public interest, and thus any showing is unnecessary.<sup>29</sup> This analysis is equally applicable to point-to-point microwave applications, thus rendering the information required by Section 21.706(a) also unnecessary. To continue to require this information imposes unjustified burdens on applicants. Also, as the Commission specifically noted, it can require the submission of a public interest showing in the context of particular applications.<sup>30</sup> The requirement thus appropriately should be deleted.

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<sup>27</sup> 47 C.F.R. § 21.13(a)(4) (1993).

<sup>28</sup> Notice, ¶ 11. See 47 C.F.R. § 21.706(a) (1993). Proposed Section 101.713 reflects the deletion of the policy. Notice at 175-76.

<sup>29</sup> Notice, ¶ 11.

<sup>30</sup> Id.



**G.    The Commission Should Solicit Public Comment on Proposals for Revised Forms 494 and 494-A**

On September 2, 1994, the Commission issued a public notice directing applicants on Form 494 to provide certain additional information.<sup>31</sup> The Public Notice indicated that the Commission will be implementing a new automated licensing system for the microwave applications processed in Gettysburg and that the forms would be revised consistent with the computer requirements.<sup>32</sup> Before the Commission finalizes the revised Forms 494 and 494-A to accommodate those changes as well as the revisions made in this rulemaking, GTE urges the Commission to solicit comment on the proposed forms. Receiving and evaluating comments from the licensees that must prepare such forms should assist the Commission in finalizing the forms in the most effective format.<sup>33</sup>

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<sup>31</sup>    FCC Public Notice, "Private Radio Bureau To Implement New Microwave Licensing System; Notice To Provide Alternate Information," Mimeo No. 44611 (Sept. 2, 1994).

<sup>32</sup>    Id. at 1.

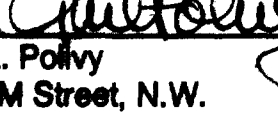
<sup>33</sup>    In Implementation of Sections 3(n) and 332 of the Communications Act — Regulatory Treatment of Mobile Services, GN Docket No. 93-252 (Sept. 23, 1994) (Third Report and Order), the Commission adopted a new Form 600. Although the Commission had solicited comments on the proposed form, many parties urged deferring action until the rulemaking was complete. The Commission proceeded to adopt the form with some modifications in response to comments. Petitions for reconsideration in that proceeding, however, have identified a number of inconsistencies, omissions, and errors. This can be avoided with the Forms 494 and 494-A by affording parties a meaningful opportunity to review, evaluate, and comment on the form proposals.

**CONCLUSION**

The Notice has proposed a number of changes in its consolidation of Parts 21 and 94 that should substantially streamline the regulatory processes applicable to licensees of microwave facilities. GTE supports the majority of these steps, but believes the Commission's goals can be even better achieved by making the modifications outlined above.

Respectfully submitted,

GTE Service Corporation on behalf of its  
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